1953

File No. O/Coal Coke 20/53

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Subject:- Opinion on the Coal Coke

O/Coal Coke/53

File No. 20/53

Gen. 191 c.

C O N T E N T S

Legal Department File No. C. Coal Coke/53/G-20)

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Mjr/16/8/
5 Cs.

MM/2314

RSJ/748

Office of the R.L.A.

On the evidence available in these papers it is not possible to prosecute successfully the proprietor or the manager of the Shri Shakti Engineering Works for failing to furnish a full and correct statement of the stocks of hard coke from month to month. The shortage was declared in the August 1952 statement and the Rationing Inspector's report was made in November 1952 wherein he says that no dust was found on the premises. The manager has admitted that the consumption figures in the monthly statements were shown approximately and without actual weighment. But there is no independent evidence to prove this. No doubt the shortage of 36 tons in 160 tons is excessive but in the absence of any evidence to show an element of blackmarketing, the Court would treat the offence, even if it is proved, as technical.

Under clause 4 of the Bombay Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949, declarations are required to be made on the 5th of every month. The works has sent many declaration late and to that extent prosecutions would lie against the works. But no objection was so far raised by the Civil Supplies Department to such late receipt of declarations and it may be that other persons declaring their stocks late have not been prosecuted. If so, it will no be expedient to prosecute this Firm also for late submission of declarations.

Sd/- P.V.Lad

O.C. 29/1

Remembrancer of Legal Affairs.

U.R. to C.S.D., No G-68, dated the 29th January 1953.

Mjr/16/8/

4 Cs.

Legal Department.

In regard to the monthly statement, caluse 4 of the Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949, provides that every person other than a dealer shall on or before 5th day of every month furnish in form B to the authorities mentioned in clause 3 a full and correct statement of stocks of each variety of the articles specified in Schedule 1 held, consumed, or otherwise disposed of by him from time to time whether on his own account or on account of or in partnership with any other person if the stock of that article at any time during the preceding month amounted to or exceeded two tons. This order has been made under section 3 of the Essential Supplies (Temporary Powers) Act, 1946, and any contravention thereof is punishable under section 7 of the said Act. In their statement for the month of January 1952, the company has stated that the opening stock of Steem Coal was 2 tons and 10 Cwts. Apparently therefore they hold more than 2 tons during December 1951. The company has also made a statement that its average daily consumption of Steam Coal is 2 tons. It can prima facie be concluded therefore that during the month of December 1951 the Company held and consumed more then 2 tons of coal. But as it has not submitted the statement as required by clause 4 a breach of the order of 1949 has been committed. A prosecution therefore can be launched against the company. But it appears that as the Company has been submitting its statements regular~~ly be taken by the Court. Therefore a warning in this case might~~ thereafter it is likely that a lenient view of the breach may ~~suffice~~ be taken by the Court. Therefore a warning in this case might suffice.

The next question is about the failure to submit the wagon statements. In their letter dated the 12th June 1952 the Civil Supplies Department invited attention to their letter dated the 12th August 1947 under which such quarterly statements were called for. It appears however that there was no statutory requirement under which consumers of Steam Coal were required to submit such statements until a provision was made by adding clause 4A to the Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949. That caluse requires every priority.

holder to furnish to the State Coal Controller, Bombay, quarterly statement in respect of the article specified in the Schedule relating to the wagons recommended under a priority certificate; but this clause was inserted by the Civil Supplies Department Notification No. 38/IV.E, dated the 21st January 1953. Before that the statements appear to have been called for on the authority of executive orders. No breach punishable under the 1946 Act can therefore be deemed to have been committed. No prosecution can therefore lie in respect of this matter.

Sd/-

O.C.

Additional Secretary to Government.

U.R. to C.S.D., N C.- 342, dated the 11th June 1953.

Mjr/16/8/

4 Cs.

L.D.R.I.No. G-665 dt 2-7-53

Submitted.

2. For full facts of this case, please see this office notes underlying R.L.A's opinion No,. G.140 dated 2-3-53.

3. The R.L.A. advised the C.S.D. in his opinion No. G.140, dated 2-3-53 that the Ashok Cotton Pressin Factory and Oil Mills could be successfully prosecuted under cause 7 of the Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949 for not declaring their stock of Steam Coal meant for Oil mills during the months of December 1951 and January 1952. As per this advice, the C.S.D. asked the D.M.E.K. to launch a prosecution against party. The Sub-Inspector of Police, Dodwad has now filed the case against the Mills. He has requested the C.S.D. to intimate to him the full name of the clerk who received declarations of stocks in the Department, as according to him, it would be necessary to examine the clerk in the court of Law on behalf of the prosecution. The D...., when asked to offer remakks whether it would be necessary for a clerk from the C.S.D. to give evidence in the court, has stated as follows:-

"The allotments are made to the consumers by the C.S.D. direct. The wagon statements are also received by the R.L. from the proprity holders. The correspondence and the inquiry in this case also seated in the C.S.D. In the circumstances the clerk from C.S.D. would only be able to prove that the party was allotted certain stocks that these stocks were received by the party during December 1951 and January 1952 and that the party failed to declare stocks although they were declarable."

The returns are received in the C.S.D. by a clerk, Kumari Desai. The case of the Ashok mills has been dealt with in the C.S.D. by a Junior

Assistant, Shri K.M. Parab. It is proposed by the C.S.D. to send the name of Shri Parab to the Police Sub-Inspector. Before, however, doing so, the C.S.D. has referred these papers to this office for R.L.A's advice whether it is really necessary for a clerk in that Department to attend a court in the East Khandesh District.

Mjr/16/8/

4 53.

Legal Department.

The view taken by the Collector, East Khandesh, is correct. The clerk from the State Coal Controller's Office will have to attend the court.

Sd/-

O.C.

Additional Secretary to Government.

U.O. to C.B.R., No. G-410, dated the 11th July 1953.

Mjr/16/8/

I.C.

No. 38/7829/IV-E,

Civil Supplies Department,

Bombay Castle (Bombay No. 1), July 1953.

To

The District Magistrate,
Ahmedabad.

Subject:- Bombay Essential Commodities and Cattle Control) Act, 1946.

Reference your endorsement No. M.S.C. 237/11 Hard Coke dated the 27th May 1953, on the subject noted above. -

Under section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946 "Coal" was declared an essential commodity. Later on, a court in Bombay, decided in a case, that "Coal" did not include "Coke"! In order to bring "Coke"within the purview of the control, Schedule I appended to the Bombay Essential Commodities and Cattle (Control) Act, 1946 was amended so as to include"Coke" as one of the essential commodities. However, subsequently, the Government of India amended the Essential Supplies (Temporary Powers) Act, 1946, by its Ordinance No. XIV of 1949 so as to include "Coke" as an essential commodity. By the Ordinance, the words and brackets "(including coke and other derivatives of coal") were inserted after the entry coal in clause 2(a) of the Essential Supplies (Temporary Powers) Act, 1946, Since then, "Coke" has ceased to be an essential commodity under the Bombay Essential Commodities and Cattle (Control) Act, 1946. "Coke" is therefore now an essential commodity, under the Essential Supplies (Temporary Powers) Act, 1946 and not under the Bombay Essential Commodities and Cattle (Control) Act, 1946. The Millowners' Association may be informed accordingly.

Director of Civil Supplies (Fuel and Fodder and State Coal Controller, Bombay

Mjr/10/8/

A revised draft letter is appended.

Sd/

Additional Secretary to Government.

U.R. to C.S.D. No. G-425, dated the 19th July 1955.

Submitted for approval and signature with the draft be letter as revised by A.S.(G).

Sd/

A.S.(G) The draft letter as further amended may be approved.

D.S.(G)

Addl. Secy. Sd/ 18/7

Submitted.

2. Please see the office note of the C.S.D. on pages 119-120 ante.

3. The facts of this case in short are as follows :-

The coal and coke dealer of Chalisgaon, Shri M.M. Chandla was asked by the C.S.D. on 14-5-51 to submit his monthly statements from July 1950 upto date and wagon statements for the quarter from June to August 1950 as required under the provisions of the Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949 inspite of 3 remedies he failed to submit his statements. The Collector of East Khandesh District was therefore asked by the C.S.D. t to take action against the dealer as required under the C.S.D. Circular No. 38(b)/7031/IV-E, dated 23-7-1951- In the mean time the dealer submitted one statement for the months from July 1950 to August 1951. He stated in his statement that he had not submitted the monthly statements as he was not aware that he had to submit the same. The Collector of East Khandesh warned the dealer on 6-10-1951 for non-submission of the statements inspite of the C.S.D. reminders. The dealer again failed to submit his monthly statements from December1951 onwards and wagon statement for the quarter from December 1951 to February 1952. A show cause notice was therefore issued to him. Although 1 wagon of each hard coke and soft coke had been received by him in February 1952, he submitted the monthly statements for April and May 1952 only. A wagon statement for the quarter from December 1951 to February 1952 was also submitted by him. He was asked to submit the monthly statements for February and March 1952. However, inspite of 3 reminders he failed to submit the said statements. The D.M. E. K. was therefore again asked by the

C.S.D. to take suitable action against the dealer. The D.M. issued a severe warning to the dealer on 22-10-1952 with an understanding that further non-submission of statements would result in his prosecution and cancellation of his agency. The dealer again did not submit his monthly statements to Government from November 1952 onwards. The C.S.D. therefore asked D.M. E.K. to take action against him for the 3rd time. When asked to explain by the D.M. the dealer stated that he did not submit the statements for the months from November 1952 onwards, as he was under the impression that no statement was required to be submitted when there were no sales. The Collector, E.K. recommended to the C.S.D. that the dealer may be prosecuted and his agency cancelled as he is persistent in non-submission of the statements. The dealer has now submitted the statements from Nov. 1952 to March 1953 on 30-3-53. The C.S.D. proposes to pass orders for prosecution of the dealer. Before, however, doing so the C.S.D. has forwarded the papers to this office for R.L.A.'s opinion whether the prosecution, if launched against the dealer would be successful.

Prosecution would lie against Shri Chandla under clause 3 of the Steam Coal, Hard and Soft Coke (Declaration of Stocks) Order, 1949. But before doing so the Civil Supplies Department may verify that the stock held by Shri Chandla does not fall under any of the categories mentioned in clause 5 of the said order.

Sd/

Secretary to Government.

U.R. to C.S.D. No. G-437, dated the 25th July 1953

VGP. 16-8-56.

Submitted.

2. Please see the note of the Civil Supplies Department on pages 75-79 ante.

3. The facts of this case, in short, are as follows:-

One Shri Sonulal Shamlal owner of a Small Channa Kurmura shop applied to the State Coal Controller, Bombay on 7-1-1953 for renewal of his permit for soft coke. Inquiries made by the Inspector revealed that the party had not got his permit renewal after its expiry in December 1951 as Messrs. Indian Coal Suppliers Company and other hawkers were supplying coke to him. The Inspector found six bags of hard coke and seven bags of gas coke behind the shop. Shri Bhanuram the brother of Shri Sonulal stated that the stock of hard coke which amounted to 6 cwts, had been purchased by them from M/s, Indian Coal Suppliers Company (vide challan at p. 33) who were supplying 5-6 bags of hard coke to them every month. At first Shri Mantri, proprietor of M/s. Indian Coal Suppliers denied to have supplied any coke to Shriyuts Sonulal and Bhanuram. However when called before Shri Bhanuram he admitted that he had supplied (and not sold) hard coke once to Shriyuts Sonulal and Bhanuram under the challan at p. 33 ante. He had stated, however, that he could not disclose the source from where he had got the hard coke. Shri Bhanuram also stated that they had received hard coke from Shri Mantri once only through a cart which he could not recognize. The C.S.D. thinks that as there is no evidence to prove that Shri Mantri had sold the stock of hard coke to Shriyuts Sonulal and Bhanuram he could not be

held liable for not issuing a cash memo in respect of the sale as required under clause 4 of the Greater Bombay Coal and Coke (Price Control) Order, 1950. However, R.L.A. is requested to advise whether a successful prosecution can lie against Shri Mantri.

As there is hardly any evidence to establish sale of coke by Shri Mantri, no prosecution would be feasible for breach of clause 4 of the Greater Bombay Coal and Coke (Price Control) Order, 1950.

Sd/

Secretary to Government.

U.R. to C.S.D. No. G- dated the July 1953.

VGP. 16-8-56.

For a successful prosecution against Shri Mantri under clause 4 of the Greater Bombay Coal and Coke (Price Control) Order, 1950, the prosecution will have to prove firstly that Fulchand Chanawalla's shop is the same as run by Sonulal Shamlal and secondly that the hadnwriting in the cart-chit is that of Shri Mantri. Thirdly it will have to be shown from the books of accounts, if any, kept by Sonulal that he had paid money from time to time and for this transaction in particular to Messrs. Indian Coal Supplying Company. Unless, there is some evidence to prove definitely the sale, it would not be possible to successfully prosecute Shri Mantri.

The Civil Supplies Department may, therefore, forward the papers to the Police for through investigation in the matter.

Sd/

Secretary to Government.

U.R. to C.S.D. NO. G- 469, dated the 5th August 1953.

VGP. 16-8-56.

These papers are referred to the Legal Department for advice as to what action can be taken against Dattaram for using steam coal surreptitiously and against Raghurajsingh for the alleged sale of steam coal to Dattram.

No legal action would be possible against either Dattaram or Raghurajsingh. There is no statutory ban on obtaining steam coal without a permit and Dattram cannot be prosecuted for surreptitiously obtaining it from Raghurajsingh and using it in his factory. There is a control on the prices of steam coal (Please see clause 2(A) of the Greater Bombay Coal and Coke (Price Control) Order, 1950.) But in this case there is no evidence to prove sale by Raghurajsingh to Dattaram. Raghurajsingh had denied the sale. Dattaram had admitted the purchase at Rs. 1-1-0 higher than the controlled rate but in the absence of any other evidence, a court is not likely to believe his bare word. Sukhadeo who started the trouble seems to be a disgruntled past employee of Shri Raghurajsingh. He will therefore not be believed. The Inspection report at pages 59-60 shows that Shri Dattaram is not in Bombay and his whereabouts are not known. In these circumstances, prosecution of Raghurajsingh for sale of steam coal at a rate higher than the controlled rate will not succeed on the evidence that is available in these papers.

Sd/

Additional Secretary to Government.

U.R. to C.S.D. NO. G- 611, dated the 3rd October 1953.

VGP. 16-8-56.